

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
Western Division (Raleigh)  
Case No. 5:09-cv-331

FILED

MAY 09 2011

DENNIS P. IAVARONE, CLERK  
US DISTRICT COURT, EDNC  
BY                      DEP CLK

In Re: Stephen Thomas Yelverton )

Appellant )

Stephen Thomas Yelverton. )

Plaintiff (terminated 4-13-11) )

Wendell W. Webster, in his capacity as )  
Chapter 7 Trustee in Bankruptcy for )  
Debtor Estate of Stephen Thomas )  
Yelverton (substituted 4-13-11) )

Plaintiff, )

v. )

Yelverton Farms, Ltd., Phyllis )  
Edmundson, Charles Edmundson, )  
and Deborah Marm, )

Defendants. )

NOTICE OF APPEAL

RECEIVED  
2011 MAY -9 AM 10:04  
U.S. COURT OF APPEALS  
FOURTH CIRCUIT

Notice is hereby given that Stephen Thomas Yelverton, the terminated Plaintiff in the above named case, hereby appeals, pursuant to 28 U.S.C. 1291, to the United States Court of Appeals for the Fourth Circuit, from the Order, entered April 13, 2011, and the related Order, entered March 7, 2011, stripping the Plaintiff of his right of "standing" in Case No. 5:09-cv-331, in violation of the United States Constitution, Article III, and the First and Fifth Amendments, and in violation of the Federal Rules of Civil Procedure, Rule 25 (c). By terminating all rights of a party, this is a "final" order, and thus immediately appealable. In Re Looney, 823 F.2d. 788, 790-791 (4th Cir. 1987); Dalkon Shield Claimants v. A.H. Robins, Co., Inc., 828 F.2d 239, 241 (4th Cir. 1987).

This matter would also be immediately appealable under 28 U.S.C. 1292 (a)(2), as an interlocutory order appointing a receiver. The statutory standard is met as a result of the Appellant/Plaintiff litigating Case No. 5:09-cv-331 in the United States District Court for the Eastern District of North Carolina for over one year before the involuntary conversion of his Chapter 11 Bankruptcy case to Chapter 7 (Case No. 09-00414 in the United States Bankruptcy Court for the District of Columbia), which was accomplished through the actions of the Defendants, and then their subsequent actions to remove him as the Plaintiff in Case No. 5:09-cv-331 solely on the basis of this involuntary conversion.

The Defendants improperly moved in Case No. 5:09-cv-331 for substitution of the District of Columbia Chapter 7 Trustee for the Appellant/Plaintiff under Fed. R. Civ. P., Rule 17, which motion was not from the Trustee as required by Rule 25 (c), who was then involuntarily and improperly substituted under Rule 17 in Case No. 5:09-cv-331 as a result of the actions of the Defendants.

The Appellant/Plaintiff retains the right of “standing” under Article III of the United States Constitution in Case No. 5:09-cv-331 on the basis of having claims against the Defendants in excess of the Bankruptcy debts to be discharged by the District of Columbia Chapter 7 Trustee, who has no obligation and authority to litigate and recover claims in Case No. 5:09-cv-331 in excess of these Bankruptcy debts. Thus, the Trustee could not adequately represent the interests of the Appellant/Plaintiff because of having statutorily imposed interests different from those of the Appellant/Plaintiff. McGuirl v. White, 86 F.3d 1232, 1234-1236 (D.C. Cir. 1996); Willemain v. Kivitz, 764 F.2d 1019, 1022 (4th Cir. 1985).

The Appellant/Plaintiff supports joinder by the District of Columbia Chapter 7 Trustee in Case No. 5:09-cv-331, under Fed. R. Civ. P., Rule 25 (c), and thus joinder is not an issue on appeal.

The Notice of Appeal is timely filed within 30 days of the Order, entered April 13, 2011, which denied the Appellant/Plaintiff's timely filed motion under Fed. R. Civ. P., Rule 59 (e), with respect to the Order, entered March 7, 2011. See, Fed. R. App. P., Rule 4 (a)(4)(A)(iv).

The Appellant/Plaintiff was granted In Forma Pauperis status by the United States District Court for the Eastern District of North Carolina. See, attached Order. Thus, under Fed. R. App. P., Rule 24 (a)(3), no filing fees are required.

Submitted the 9th day of May, 2011.

Respectfully,

A handwritten signature in black ink, appearing to read "Stephen Thomas Yelverton". The signature is fluid and cursive, with a large initial "S" and "Y".

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THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:09-CV-331-FL

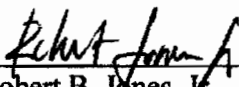
STEPHEN THOMAS YELVERTON, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
YELVERTON FARMS, LTD., PHYLLIS )  
EDMUNDSON, CHARLES )  
EDMUNDSON, and DEBORAH MARM, )  
 )  
Defendants. )

**ORDER**

This matter is before the court on plaintiff's application to proceed *in forma pauperis* under 28 U.S.C. § 1915, which permits an indigent litigant to commence suit in federal court without paying administration costs associated with such proceedings. Plaintiff has demonstrated appropriate evidence of inability to pay the required court costs. Accordingly, plaintiff's application is allowed.

The clerk is directed to file the complaint and issue the summons prepared by plaintiff. The United States Marshal is directed to serve the summons and a copy of the complaint on defendants.

SO ORDERED, this the 29th day of July, 2009.

  
Robert B. Jones, Jr.  
United States Magistrate Judge